



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

X
ANDREW BARRON WORDEN and BARRON
PARTNERS LP,

Plaintiffs,

-against-

RICHARD N. BELL, COHEN & MALAD LLP,
And DOES 1-5

Defendants.

X
CIVIL ACTION NUMBER:
08 CV 01812 (JES)

**PROPOSED ORDER
PLACING MATTER ON
SUSPENSE CALENDAR**

X

WHEREAS, a Pre-Motion Conference was conducted on April 8, 2008, before the Hon. Judge John E. Sprizzo, U.S.D.J. and attended by Peter Sharp, Esq. as counsel for the Plaintiffs and Shari Claire Lewis, Esq. as counsel for the Defendants; and

WHEREAS, the purpose of the Pre-Motion Conference was to address the Defendants' proposed Motion to Dismiss to the plaintiffs' Complaint, pursuant to Fed. R. Civ. P. 12(b)(2), (3), (4), (5) and (6) or 28 U.S.C. 1406 or alternatively, to transfer pursuant to 28 U.S.C. 1404(a) or alternatively, to stay the action pending hearing and determination of the action entitled Thompson v. Altavilla, et. al., Case No. 29 COL-0603-PL 199, Hamilton County Circuit Court, State of Indiana ("Thompson Action") and such Pre-Motion Conference is required by the Individual Rules of this Court before any motion may be filed with the Court; and

WHEREAS, the Court expressed its preference that it defer determination of the Defendants' Motion, including questions of jurisdiction, forum selection, failure to state a cause of action, privilege, immunity, and whether the abovementioned litigation was properly before this Court, while the Thompson Action is pending; and

WHEREAS, the Court therefore proposed that above captioned litigation be suspended pending the hearing and determination of the Thompson Action, in the interest of comity and on the grounds that many issues of Indiana State law that will be determined in that action may impact the determination of the matter at bar; and

WHEREAS, Defendants agree not to serve their Motion to Dismiss at this time, so that the matter may be placed on the suspense calendar, so long as their forbearance does not act as a waiver of any defense or objection that was could have been raised had the Motion been served at this time; and

WHEREAS, pursuant to the Order of the Court, dated March 27, 2008, the time for Defendants to respond to the Plaintiffs' Complaint was enlarged *sine die* until such time as may be set by the Court;

NOW IT IS ON this 22 day of April, 2008, hereby:

ORDERED THAT this matter is hereby transferred to the Court's suspense calendar for one year or until such time as there may be a determination of the Indiana State Court matter entitled, Thompson v. Altavilla, et. al., Case No. 29 COL-0603-PL 199, Hamilton County Circuit Court, State of Indiana, whichever is longer; and it is

ORDERED THAT Defendants' time to respond to the Complaint is hereby enlarged until such time as may be set by the Court after the matter is restored from the suspense calendar; and it is

ORDERED THAT either party may seek to restore the matter to the Court's active calendar on 10 days notice to the Court and the other party advising that the Thompson Action has been concluded; and it is

ORDERED THAT this Order is without waiver or prejudice to the right of Defendants' to raise any defense or objection that they could have raised in response to the Complaint had the suit not be placed on the suspense calendar.


Hon. John E. Sprizzo, U.S.D.J.
4-22-08